

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36172

STATE OF IDAHO,	)	2010 Unpublished Opinion No. 351
	)	
Plaintiff-Respondent,	)	Filed: February 17, 2010
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
JESUS MORENO PENA,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Sixth Judicial District, State of Idaho, Power County. Hon. Peter D. McDermott, District Judge.

Judgment of conviction and unified sentence of five years, with a minimum period of confinement of three years, for accessory to delivery of a controlled substance, affirmed; order denying I.C.R. 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Jessica M. Lorello, Deputy Attorney General, Boise, for respondent.

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Before LANSING, Chief Judge, GUTIERREZ, Judge  
and GRATTON, Judge

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PER CURIAM

Jesus Moreno Pena appeals from his judgment of conviction and unified sentence of five years, with a minimum period of confinement of three years, with credit for time served, for accessory to delivery of a controlled substance, Idaho Code §§ 37-2732(a)(1)(A), 18-205. The district court ordered the sentence to run concurrently with a sentence in a separate case. Pena also appeals the denial of his Idaho Criminal Rule 35 motion for reduction of the sentence. We affirm.

Where a sentence is within the statutory limits, it will not be disturbed on appeal absent an abuse of the sentencing court's discretion. *State v. Hedger*, 115 Idaho 598, 768 P.2d 1331

(1989). We will not conclude on review that the sentencing court abused its discretion unless the sentence is unreasonable under the facts of the case. *State v. Brown*, 121 Idaho 385, 825 P.2d 482 (1992). In evaluating the reasonableness of a sentence, we consider the nature of the offense and the character of the offender, applying our well-established standards of review. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 650 P.2d 707 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

A motion for reduction of a sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 159 P.3d 838 (2007). In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *Lopez*, 106 Idaho 447, 680 P.2d 869.

Having reviewed the record, we conclude that the district court did not abuse its discretion in imposing Pena's sentence nor in denying Pena's Rule 35 motion for reduction of sentence. The judgment of conviction and sentence, and the order denying Pena's Rule 35 motion, are affirmed.